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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,523	03/17/2004	James E. Price	2095001US2AP	5473
45069	7590	09/02/2005	EXAMINER	
FRED ZOLLINGER III P.O. BOX 2368 NORTH CANTON, OH 44720			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,523

Applicant(s)

PRICE ET AL.

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-19 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12 is/are rejected.
- 7) ☒ Claim(s) 9, 10, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/17/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Applicant's election of Group I, and the species of figures 7 & 8, in the reply filed on 22 June 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election **without** traverse (MPEP § 818.03(a)). Claims 1-19 are pending in the application. Claim 20 has been canceled. Applicant asserts that all claims read on the species of Figures 7 & 8; the examiner respectfully disagrees with this assertion. Claim is clearly directed to the species of Figures 1-6 and is withdrawn from further consideration as being directed to a non-elected invention. Claims 1-10 and 12-19 are herein examined on their merits.

Claim Rejections - 35 USC § 102

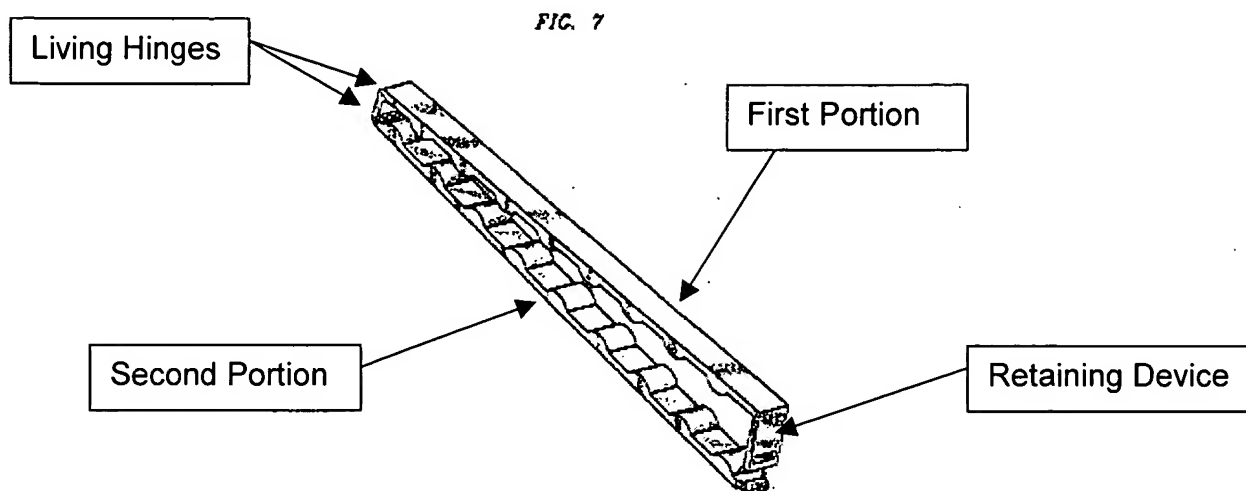
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Eisenman (Des. 384,459).

Claim 1: Eisenman discloses the claimed holder as shown below. Eisenman operates as claimed and although the device is disclosed primarily for use with socks, it is inherently capable of holding a firework (such as a small firecracker) as claimed.



Claim 6: Eisenman pivots as claimed.

Claim 7: Eisenman discloses living hinges as shown above.

3. Claims 1-5 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Rohwedder (US 1,816,399).

Claim 1: Rohwedder discloses first portion (front arm of **2** in Figure 1), second portion (back arm of **2** in Figure 1), and retaining device **4**. Although Rohwedder is disclosed primarily for use with bread, it is inherently capable rectangular-shaped fireworks as claimed.

Claims 2 and 3: Rohwedder discloses a first cord portion (end half of **4** without loop **5**) and a second cord portion (end of **4** with loop **5**), which function as claimed.

Claim 4: Rohwedder discloses an opening (ends of **2** over which **3** is applied) with the cord portions extending across the opening as claimed (see Figure 1).

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Claim 5: Rohwedder discloses cord lock 7.

Claim 12: Rohwedder is capable of folding flat.

4. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Schooley (US 2,129,039).

Claim 1: Schooley discloses a safety holder (Figure 1) with a first portion **13** and a second portion **19**, and retaining device **23**. First and second portions are movable as claimed and the holder is designed for holding fireworks.

Claim 8: Schooley discloses anchor **10**.

Allowable Subject Matter

5. Claims 15-19 appear to distinguish over the prior art of record.

6. Claims 9, 10, 13, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Greg Pickett
Examiner
30 August 2005


Mickey Yu
Supervisory Patent Examiner
Group 3700